

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
IN BANKRUPTCY AND INSOLVENCY
JUDICIAL DISTRICT OF MIRAMICHI

IN THE MATTER OF THE RECEIVERSHIP OF:

ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC.

PURSUANT TO Section 33 of The *Judicature Act*, R.S.N.B. 1973, Ch. J-2, Rule 41, Rules of Court, New Brunswick and Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3

BETWEEN:

**THE BANK OF NOVA SCOTIA, a Canadian chartered bank
with a registered office in the City of Saint John, Province of
New Brunswick**

APPLICANT

- and -



ATCON GROUP INC., ATCON HOLDINGS INC., ATCON PROPERTY HOLDINGS INC., ATCON VENEER PRODUCTS INC., ATCON LOGISTICS INC., ATCON CONSTRUCTION INC., ATCON MANAGEMENT SERVICES INC., ATCON CIVIL LTD., DYCON CONSTRUCTION LTD., ATCON STRUCTURES INC. AND ENVIREM TECHNOLOGIES INC., all of which are carrying on business in the Province of New Brunswick

RESPONDENTS

ORDER

THIS MOTION, made by Ernst & Young Inc. in its capacity as Court-appointed receiver and receiver manager of the property, assets and undertakings of the Respondents (the

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"Receiver") for an Order, *inter alia*, approving the Caterpillar Settlement Agreement (as defined below) and authorizing, empowering and directing the Receiver to make certain distributions from the Builders' Lien Holdback (as defined below) was heard this day at 673 King George Highway, Miramichi, New Brunswick.

ON READING the Receiver's Notice of Motion dated October 22, 2010, the Ninth Report of the Receiver dated October 22, 2010 and all the appendices attached thereto (the "**Ninth Report**"), and on hearing the submissions of counsel for the Receiver and such other counsel in attendance,

1. **THIS COURT ORDERS** that the time for service of the Receiver's Notice of Motion, the Ninth Report and the Record on Motion shall be and is hereby abridged and validated so that the motion is properly returnable today, and that any further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS AND DECLARES** that the Caterpillar Settlement Agreement (as defined in the Ninth Report and attached as Appendix "E" thereto) is hereby approved, and Caterpillar Financial Services Limited ("**Caterpillar**") and the Receiver are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the terms of the settlement contained in the Caterpillar Settlement Agreement.

3. **THIS COURT ORDERS** that the Receiver is authorized, empowered and directed to distribute:

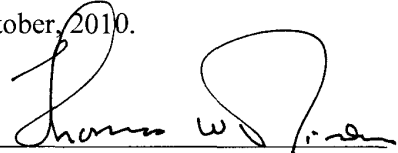
- (a) \$1,200,000 to Caterpillar from the funds in the Builders' Lien Holdback (as defined in the Ninth Report) in connection with the Caterpillar Settlement Agreement;
- (b) \$228,900.22 to Emeco Canada Limited ("**Emeco**") from the funds in the Builders' Lien Holdback on account of the principal amount of the Emeco Builders' Lien (as defined in the Ninth Report);

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28 Oct 2010

- (c) in light of the consent or non-opposition of the parties and the complexity of the matter, \$7,000 to Emeco from the funds in the Builders' Lien Holdback on account of Emeco's costs with respect to the Emeco Builders' Lien; and
- (d) \$2,576,592.84 to The Bank of Nova Scotia (the "**Bank**") from the Builders' Lien Holdback, plus any additional interest accrued thereon prior to distribution.

4. **THIS COURT ORDERS** that this Order, and any person's consent or non-opposition thereto, is without prejudice to the rights, arguments, claims and positions of any person on any subsequent motion in these proceedings (the "**Receivership Proceedings**") or the proceedings commenced under the *Companies' Creditors Arrangement Act* bearing Court File No. N/M/16/10 (the "**CCAA Proceedings**") in connection with an allocation of any Court-ordered charges granted in the Receivership Proceedings and the CCAA Proceedings against the property, assets and undertakings of the Respondents, including without limitation the right of any person to argue, claim or take the position that any portion of the distributions made by the Receiver to the Bank pursuant to paragraph 3 hereof shall be treated as accounts receivable of Atcon Construction Inc. in connection with an allocation of any Court-ordered charges granted in the Receivership Proceedings and the CCAA Proceedings against the property, assets and undertakings of the Respondents.

Dated at Miramichi, New Brunswick, this 28th day of October, 2010.



Thomas W. Riordon
Judge of the Court of Queen's Bench of
New Brunswick